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DEPARTMENT OF MANAGED HEALTH CARE
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BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
OF THE STATE OF CALIFORNIA

IN THE MATTER OF:

Kaiser Foundation Health Plan, Inc.

Respondent.

) Enforcement Matter No.: 05-180

) OAH No.:

) **ORDER TO REINSTATE ENROLLEE'S**
) **HEALTH CARE COVERAGE WITH**
) **KAISER FOUNDATION HEALTH PLAN,**
) **INC.**

The Director of the Department of Managed Health Care, by and through her designee, Assistant Deputy Director, Amy L. Dobberteen, makes the following Order. This Order is based upon the Director's statutory authority in Health and Safety Code section 1344(a) to adopt such orders as are necessary to carry out the provisions of the Knox-Keene Act, in particular, sections 1367(d), requiring continuity of care; 1367(e)(1), mandating that all services be readily available at reasonable times to each enrollee consistent with good professional practice; and 1389.3, mandating that a health care service plan complete pre-enrollment medical underwriting before approving an application for health care coverage. This Order is further based on the Director's power, authorized in section 1391.5, to safeguard against the possibility of harm or injury to Kaiser's enrollees.

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FACTUAL BACKGROUND

The Enrollee (Member No. 11-5661819), was a Kaiser Foundation Health Plan, Inc. (Kaiser) member for twenty (20) years, from April 1984 until September 2004, when Kaiser wrongfully rescinded her health care coverage. Initially, the Enrollee and her family were insured under a Kaiser group health insurance plan through her employer. In December 1998, the Enrollee terminated her employment but continued to have coverage through Kaiser under a COBRA plan. In 1999, Kaiser switched the Enrollee's coverage to a "Conversion Plan" and converted her family members' coverage to a Personal Advantage Plan. This resulted in the Enrollee's family having to pay three separate premium invoices for health care each month.

In January 2004, the Enrollee contacted Kaiser to request a consolidation of her family's health care coverage to a single plan. Kaiser informed the Enrollee that the only way her request could be accomplished was to have her apply for a Personal Advantage Plan. The Enrollee completed her application for the Personal Advantage Plan and Kaiser approved her application in May 2004.

Approximately three months before the Enrollee's health care coverage was consolidated with her family's existing Personal Advantage Plan, the Enrollee was treated for arm and neck pain by Dr. Ronald Tempesta (a Kaiser physician at the South San Francisco facility). Dr. Tempesta concluded that the Enrollee had spinal stenosis and prescribed hydrocodone and acetomiphen. The Enrollee received her prescriptions from Kaiser's pharmacy and Kaiser paid for these prescriptions.

In September 2004, Kaiser notified the Enrollee that her health care coverage was rescinded for failure to disclose her arm and neck pain on her Personal Advantage application. Kaiser threatened to report the Enrollee to law enforcement and sent her a bill for \$13,000 to pay for services that should have been covered by Kaiser.

The Enrollee had no reason to believe that Kaiser was not on notice of her arm and neck pain at the time she filled out her Personal Advantage application. Not only did a Kaiser physician treat her for her neck and arm pain, but Kaiser also filled and paid for

1 her pain medication. As such, there is absolutely no evidence that the Enrollee intended
2 to misrepresent or omit important health history because it was reasonable for her to
3 assume that Kaiser was on notice of the treatment she received for her arm and neck pain.

4 The Enrollee suffers from a serious congenital kidney disorder for which Kaiser
5 treated her during the twenty (20) years she was a Kaiser member. Her kidney disorder
6 causes very large kidney stones that require medical treatment. Currently, the Enrollee is
7 again experiencing serious complications caused by her kidney disorder and she is in
8 need of immediate medical treatment for this condition. Because she no longer has
9 health care coverage, she fears she will be forced to go to an emergency room because
10 she is no longer able to see the Kaiser urologists who treated her for this condition for the
11 twenty (20) years that she had health care coverage with Kaiser. More importantly,
12 without insurance, she cannot afford to pay for the medical treatment needed to treat her
13 serious kidney condition and she is fearful that her family will be financially devastated if
14 they are required to pay for treatment which should be covered by Kaiser.

15 Due to her serious health condition, the Enrollee filed an expedited grievance with
16 the Department of Managed Health Care's HMO Help Center on September 25, 2006.
17 The HMO Help Center contacted Kaiser that same day. The HMO Help Center's
18 correspondence reminded Kaiser that its application required the Enrollee to disclose her
19 Kaiser member identification number and to authorize Kaiser to review her medical
20 records, which she did. After a cursory review, Kaiser approved the Enrollee's Personal
21 Advantage application without reviewing her prior medical records or her prior
22 utilization rates resulting in Kaiser's failure to conduct appropriate pre-enrollment
23 medical underwriting before approving the Enrollee's application.

24 Kaiser's rescission violates Health and Safety Code section 1389.3, because Kaiser
25 failed to properly complete pre-enrollment underwriting by reviewing the Enrollee's prior
26 utilization rates or reviewing her Kaiser medical records. Moreover, Kaiser failed to produce
27 any evidence that the Enrollee willfully misrepresented her health history before rescinding
28 her health care coverage.

1 As a result, the HMO Help Center directed Kaiser to “**immediately reverse its**
2 **position on [the Enrollee’s] rescission . . . within five (5) calendar days**” from
3 September 25, 2006.


4 Kaiser responded to the HMO Help Center on October 2, 2006 and refused to
5 follow the HMO Help Center’s directive to immediately reinstate the Enrollee’s health
6 care coverage. Despite the fact that Kaiser was on notice that the Enrollee was again
7 experiencing serious complications from her kidney disorder, a serious threat to her
8 health and well being, it declined to reinstate her coverage pending the outcome of the
9 arbitration of the Enrollee’s case.

10 Based on all of the foregoing, and because Kaiser refused to comply with the
11 HMO Help Center’s directive to “immediately reinstate” the Enrollee’s coverage, this
12 Order of Reinstatement is necessary to protect the health and well being of the Enrollee
13 pursuant to Health & Safety Code section 1391.5.

14 **THEREFORE, IT IS HEREBY ORDERED:**

- 15 1. That Kaiser Foundation Health Plan, Inc. immediately reinstate the
16 Enrollee’s health care coverage under her family’s existing Personal
17 Advantage Plan, effective September 30, 2006, pending the outcome of the
18 reinstatement arbitration of the Enrollee’s case against Kaiser;
- 19 2. That Kaiser Foundation Health Plan, Inc. authorize the Enrollee to
20 immediately see her treating urologist for treatment of her serious kidney
21 disorder and cover all charges for medically necessary treatment;
- 22 3. That this Order shall be effective immediately and shall continue in full
23 force and effect until further Order of the Director.

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25 Dated: October 6, 2006

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28 AMY L. DOBBERTEN
Assistant Deputy Director
Department of Managed Health Care